

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

Alfred Gray,

Plaintiff,

v.

**Case No. 3:06-cv-004
Judge Thomas M. Rose**

Green Tokai Co., Ltd,

Defendant.

ENTRY AND ORDER OVERRULING DEFENDANT'S OBJECTION TO REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE (DOC. 15); ADOPTING MAGISTRATE JUDGE SHARON L. OVINGTON'S REPORT AND RECOMMENDATIONS (DOC. 14) IN THEIR ENTIRETY; AND GRANTING GREEN TOKAI'S MOTION TO DISMISS COUNTS TWO, THREE AND FIVE OF PLAINTIFF'S COMPLAINT (DOC. 4) IN PART, DISMISSING COUNTS THREE AND FIVE OF PLAINTIFF'S COMPLAINT WITH PREJUDICE AND OTHERWISE DENYING GREEN TOKAI'S MOTION TO DISMISS COUNTS TWO, THREE AND FIVE OF PLAINTIFF'S COMPLAINT. (DOC. 4).

This matter is before the Court pursuant to Defendant's Objection to Report of United States Magistrate Judge (doc. 15). The Report and Recommendation addresses the ability of Plaintiff Alfred Gray to pursue claims under Ohio Revised Code §§ 4112.99 and 4112.02(N) simultaneously. While Judge Ovington concludes that the Ohio Supreme Court is likely to allow pursuit of both claims in one action, Green Tokai insists that these claims should be subject to the statutorily mandated election of remedies that exists in other contexts of Ohio anti-discrimination law.

The Magistrate Judge entered a Report and Recommendations recommending that the Court grant in part Green Tokai's motion to dismiss, recommending that the Court grant it with regard to Counts Three and Five of Plaintiff's Complaint and but that the Court otherwise deny Green Tokai's the motion (doc. 14). Green Tokai has filed an objection to this recommendation insofar as it recommends denying its motion in part (doc. 15). Plaintiff Alfred Gray filed a response to this objection, (doc. 16), rendering the matter ripe for decision.

As required by 28 U.S.C. §636(b) and Federal Rules of Civil Procedure Rule 72(b), the District Judge has made a *de novo* review of the record in this case regarding Green Tokai's motion to dismiss. Upon said review, the Court finds that Green Tokai's objections to the Magistrate Judge's Report and Recommendation are not well-taken, and they are hereby **OVERRULED**.

The Report and Recommendations are adopted in their entirety. Green Tokai's Motion to Dismiss Counts Two, Three and Five of Plaintiff's Complaint (doc. 4), is **GRANTED** in part and Counts Three and Five of Plaintiff's Complaint are **DISMISSED with prejudice**; and Green Tokai's Motion to Dismiss Counts Two, Three and Five of Plaintiff's Complaint, doc. 4, is otherwise **DENIED**.

DONE and ORDERED in Dayton, Ohio, Friday, March 30, 2007.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE